

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5616 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE R.BALIA.

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes
2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No

GOVINDBHAI DAHYABHAI PATEL

Versus

COLLECTOR

Appearance:

MR UA TRIVEDI for Petitioner

MR UDAI R BHATT, AGP for respondents

CORAM : MR.JUSTICE R.BALIA.

Date of decision: 26/08/96

ORAL JUDGEMENT

1. Rule. Service of rule is waived. A short question arises for consideration before this court in this petition. The petitioner carries a trade as a wholesale dealer in foodgrains having wholesale licence under the Essential Articles (Licensing, Control and

Stock Declaration) Order, 1981. On 20th October, 1993, the District Supply Inspector inspected the shop of the petitioner and found that records were not complete since 8th October, 1993. In response to the show cause notice, petitioner stated that petitioner's father was seriously sick and admitted in Intensive Cardio Care Unit in Laxmi Hospital and had to be shifted to other hospitals in the course of treatment and because of that he could not attend to his business regularly and maintain regular records. The Collector after accepting the explanation to be genuine, ordered confiscation of seized goods upto 50 per cent. On revision, the State Government agreeing with the explanation submitted by the petitioner, reduced the extent of confiscation to 25 per cent of the goods seized wotyh Rs.28,475.00. These facts are not disputed.

2. It is now well settled that exercise of power under Section 6A of the Essential Commodities Act are not automatic but in the discretion of the authority concerned. It is also well settled that in all cases where a penalty has been prescribed for breach of certain conditions of licence or a provision of law, on such breach it is lawful to penalty. Question that arises for consideration is whether in the facts and circumstances of the case the impugned order of confiscation can be said to be unreasonable and arbitrary? It is also well settled that it is not always necessary to levy penalty or to visit a person with penal consequences without application of mind to the facts and circumstances attending to the case, the nature of breaches caused merely because it lawful to do so. Every trivial breach do not call for exercise of such power as are required to be in the deliberate or planned case of breaches of law.

3. Reference in this connection may be made to decision of the Supreme Court in HINDUSTAN STEEL LTD v. STATE OF ORISSA (1970) 25 STC 211, wherein principle was enunciated while construing provisions of levying penalty for non-fulfilment of statutory obligations of a dealer under Central Sales Tax Act.

"Under the Act penalty may be imposed for failure to register as a dealer: section 9(1) read with section 25(1)(a) of the Act. But the liability to pay penalty does not arise merely upon proof of default in registering as a dealer. An order imposing penalty for failure to carry out a statutory obligation is the result of a quasi criminal proceeding, and penalty will not ordinarily be imposed unless the party obliged

either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard to its obligation. Penalty will not also be imposed merely because it is lawful to do so. Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant circumstances. Even if a minimum penalty is prescribed, the authority competent to impose the penalty will be justified in refusing to impose penalty, when there is a technical or venial breach of the provisions of the Act or where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the statute."

4. Reliance was placed in the case of N.NAGENDRA RAO & CO. vs. ANDHRA PRADESH, reported in 1994 SC 2663, wherein the Supreme Court considering the scope, object and extent of Section 6A of the Essential Commodities Act has held that -

"it is inherent in it that those who are entrusted with responsibility to implement it should act with reasonableness, fairness and to promote the purpose and objective of the Act. Further it should not be lost sight of that the goods seized are liable to be confiscated only if the Collector is satisfied about violation of the Control Orders. The language of the section and its setting indicate that every contravention cannot entail confiscation. That is why the section uses the word 'may'. A trader indulging in black marketing or selling adulterated goods etc. should not, in absence of any violation, be treated at par with technical violations such as failure to put up the price list etc. or even discrepancies in stock."

5. From the undisputed fact, it is apparent that petitioner was found to be lacking in maintaining requisite records from 8th of October, 1993 upto the date of visit during which the petitioner's father was ill, requiring medical assistance in ICCU and in these circumstances without anything more, any authority could not have reasonably come to the conclusion to treat the breaches more than technical breaches and to exercise discretion in favour of imposing substantial penalty to the tune of Rs. 28,000/- for non-maintenance of proper

record during such period. Perhaps, any person situated in that circumstances would have defaulted in maintaining the records properly during such period. The discretion appears to have been exercised without application of mind to the question about necessity of levying penalty in the present case and without due application of legal principles governing discretion in exercise of power in the matter of levying Penalty. The orders suffer from error apparent on the face of the record and deserve to be quashed and hereby quashed. Rule is made absolute. No costs.
